IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1024 OF 2007

Kkrishna M. A. Raihany. ..Petitioner.
Versus
1. Union of India
2. State of Maharashtra, &
3. The Commissioner of Police, Mumbai. ..Respondents.

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Mr.A.P.Mundargi, Sr.Adv. with Mr.D.J.Khanapurkar, Adv. for the Petitioner.

Mr.D.N.Salvi, Adv. for the Respondent No.1.

Mrs.A.S.Pai, APP, for Respondent Nos.2 & 3-State.

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ALONG WITH

CRIMINAL WRIT PETITION NO.1051 OF 2007

Kkrishna M. A. Raihany. ..Petitioner.
Versus
State of Maharashtra. ..Respondent.

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Mr.A.P.Mundargi, Sr.Adv. with Mr.D.J.Khanapurkar, Adv. for the Petitioner.

Mrs.A.S.Pai, APP, for the Respondent-State.

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CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATED : AUGUST 07, 2007.

P.C.:-

1. Heard the learned Advocate for the Petitioner, the learned Advocate for Union of India and the learned APP for the State.

2. In Writ Petition No.1024 of 2007 the petitioner seeks to quash the communication dated 29th August, 2006 sent by the first respondent to the petitioner whereby letter dated 15th December, 2003 issued by the Government of India has been sought to be withdrawn. In Writ Petition No.1051 of 2007 the petitioner seeks to challenge notice dated 8th June, 2007 issued by the Deputy Commissioner of Police, Mumbai whereby the petitioner has been directed to leave the country within seven days from the date of the receipt of the said notice.

3. Though the communication dated 29th August, 2006 is sought to be challenged on the ground that there was no justification for withdrawal of the letter dated 15th December,

2003 in any public interest as such, further that affidavit-in-reply filed by the respondent discloses unsustainable reasons for withdrawal of the letter dated 15th December, 2003 and arbitrary exercise of power by the concerned authorities in almost revoking the decision to grant Indian Citizenship to the petitioner, apart from the fact that the affidavit-in-reply filed by the respondent itself and copies of the communications on behalf of the petitioner made to the Consulate General of Islamic Republic of Iran do not disclose any justifiable reason for withdrawal of the letter dated 15th December, 2003. The affidavit-in-reply apparently discloses various reasons having been considered by the competent authorities before arriving at the decision to withdraw the letter dated 15th December, 2003 and those reasons apparently refer to the public interest as such. The reasons enumerated in the affidavit-in-reply clearly disclose that the petitioner is in habit of changing his residential addresses, as also furnishing different residential addresses to different authorities of the Government and

further has been visiting to various sensitive places in the country. The affidavit-in-reply also discloses the fact that at the time when the said letter was issued, the petitioner had not renounced his Iranian nationality which was a pre-condition for grant of Indian Citizenship to the petitioner in terms of letter dated 15th December, 2003. Even as of today it is not in dispute that records nowhere disclose renunciation of the Iranian Nationality by the petitioner in accordance with the law of that country.

4. Repeatedly our attention was drawn to the correspondences by the petitioner with the Consulate General of Islamic Republic of Iran to enquire about the procedure for renouncing the Iranian nationality, on the ground that the said procedure was not known to the petitioner. Undoubtedly the letters written on 9th September, 2005 and 13th March, 2006 as well as 9th May, 2006 disclose such an enquiries with the Consulate General of Islamic Republic of Iran as well as intimation to the Government of

India about such efforts being made by the petitioner. It is pertinent to note that after issuance of letter dated 15th December, 2003, the first letter inquiring about the procedure for renunciation which was written by the petitioner to the Consulate General of Islamic Republic of Iran was on 9th September, 2005. Nothing is placed before us nor the learned Advocate has been able to point out any material which could reveal that since December, 2003 till September, 2005 any effort was made by the petitioner to ascertain the procedure for renouncing the Iranian nationality. Even the intimation to the Government of India is only by letter dated 13th March, 2006 and not earlier to that about so called efforts made by the petitioner about the procedure for renouncing the nationality of Iran. It is further pertinent to note that letter dated 9th May, 2006 was written through the Advocates and Solicitors on behalf of the petitioner. In other words the petitioner had taken enough assistance from the legal experts in India to ascertain about the procedure for renouncing the

Iranian nationality as long back as in May, 2006. In the course the arguments, it was also submitted that the petitioner have his relations in Iran which apparently discloses enough opportunities being available to the petitioner to ascertain about the procedure in renouncing the Iranian nationality in terms of law in force in that regard in Iran with the assistance of his relations in Iran. Apparently therefore the excuse which is sought to be given and the contention which is sought to be raised about the ignorance about the law and the procedure pertaining to renunciation of the Iranian nationality can not be said to be genuine and *bonafide* nor it is sufficient to believe that the petitioner had infact made sincere and *bonafide* efforts to know such procedure at any point of time since December, 2003 till this date.

5. The letter written by the Solicitor on behalf of the petitioner on 9th May, 2006, one of the paragraph therein reads thus : "In order to comply with the above mentioned requisition,

our client states that time and again he has requested your good offices to appraise him of the specific procedure to be followed for renunciation of the present nationality of Iran. Our client states that he has not received any response". Having written this letter by the Advocates and Solicitors addressed to the Consulate General it is unbelievable that the Advocates and Solicitors of the petitioner are unaware of taping the sources from which they can get the information regarding the procedure to be followed in terms of Iranian law for renouncing the Iranian nationality. That apart the above quoted statement on behalf of the petitioner clearly discloses admission on the part of the petitioner that till May, 2006 the petitioner had not renounced the Iranian nationality which was a pre-condition for consideration of grant of Indian Citizenship to the petitioner. The affidavit-in-reply discloses the same to be one of the reasons considered while taking decision for withdrawal of the letter dated 15th December, 2003 and communicated to the petitioner under letter

dated 29th August, 2006.

6. The decision by the competent authority having been arrived at after following due procedure and taking into consideration all the facts and circumstances relevant for the decision, it is not permissible in writ jurisdiction to sit in appeal over the decision or to test the wisdom of the decision by the competent authority arrived at after following due procedure required to be followed to arrive at such a decision. Since no fault can be found with the decision making process by the concerned authority, there is no case made out to interfere in exercise of writ jurisdiction with such a decision of the competent authority.

7. Added to above,the copy of the affidavit filed by Naval Driver, Assistant Commissioner of Police (I), SB, II, CID, Mumbai dated 21st December, 2005 which was filed in Criminal Writ Petition No.2652 of 2005 apparently discloses certain facts which clearly lend support to the decision arrived in the matter. The relevant

paragraphs of the said affidavit read thus :-

> "4. I say that in the year 2004 SB/II Branch CID, Mumbai received secret information alleging that the petitioner was indulging in Hawala transaction and had made certain visits to Pakistan and Iran. I say that on the basis of the said secret information initially, a secret probe was conducted and it was revealed in the said probe that the petitioner was not staying at the address given to our office i.e. Savala Sadan, 3rd Floor, 15, 16 R.C. Marg Chembur, Mumbai-71 and instead of that he was staying at 503, A, Kusum Apartments, Sector-17, Vashi Navi Mumbai. I say that it is revealed during the secret probe that the petitioner has acquired a bogus ration card by forging the signatures & Government steps of concerned authorities and the

address of Vashi, Navi Mumbai was mentioned therein.

5. I say that though, the petitioner was registered with Foreign Regional Registration Office, Mumbai he was found to be staying at different places without intimation to the concerned authorities. I say that our secret inquiry also revealed that the petitioner was having 6 different addresses. I say that it was also revealed that the petitioner has also acquired on contract basis 4 commercial stalls at Kurla Railway Station, Mumbai.

6. I say that the petitioner also procured driving license from RTO, Ghatkopar, Mumbai, State of Maharashtra, by giving his residential address of Savala Sadan, 3rd Floor, 15, 16 R.C. Marg,

Chembur, Mumbai-71. I say that the petitioner also misrepresented to the Election Commission and has got enrolled his name in the voting list of election ward No.36, Bandra Assembly Constituency, Mumbai vide voter list Sr.No.1360 by giving an address as Municipal House No.33, D'Souza House, Sherly Rajan Lane, Carter Road, Bandra (W), Mumbai-50 by using some bogus/forged documents.

7. I say that our secret inquiry at Kurla Railway Station revealed that the petitioner was actually staying at G-3, Hill View, Hill Road, Bandra (W), Mumbai-50. I say that the petitioner has also printed visiting card claiming his name to be "Krishna". I say that on the said visiting card he had given his addressed of Kural Railway Station. I crave leave to produce the said

visiting card at the time of hearing for the kind perusal of this Hon’ble Court. I say that the petitioner used to wear saffron colour Dhoti and Kurta and was donning "Tikka" on his forehead posing himself as a Hindu religious person. I say that the petitioner had neither renounced his original religion nor had embarrassed the Hindu religion by publishing the same in the official gazette.

8. I say that we also received secret information that the petitioner had also visited sensitive places of Hindu worship such as "Vaishnavadevi", ‘Amarnath’ in Kashmir and ‘Akshardham in the State of Gujarat and some other sensitive religious places by posing himself as "Krishna".

9. I say that it was also noticed

> by our officer that at his residence situated at Hill Road, Bandra, he had converted a room as Hindu Temple which was being visited/frequented by people of suspicious character. I further say that it was also observed that during the night time the petitioner was noticed visiting mosque by changing his Hindu appearance.

8. As regards the communication dated 8th June, 2007 directing the petitioner to leave the country within seven days, the same has been passed in exercise of powers under Section 3(2)(c) of the Foreigners Act, 1946. As the matter stands today, it is undisputable fact that the petitioner is not a Indian Citizen. It is also undisputed fact that the petitioner is a Iranian national. It is also undisputed fact that inspite of opportunity being given and communicated to the petitioner under letter dated 15th December, 2003 that in case the petitioner desires to acquire Indian Citizenship

he had to renounce the Iranian nationality, the petitioner has not complied with the said requirement. The records nowhere disclose any renunciation of Iranian nationality by the petitioner till this date.

9. The narration of the facts and analysis thereof hereinabove and reference to Writ Petition No.1024 of 2007 would at once reveal that the contentions which are sought to be raised against the justification for issuance of the order dated 8th June, 2007 are without any basis and are totally devoid of substance. The reasons disclosed above for rejecting the Writ Petition No.1024 of 2007 apply with equal force for rejection of the Petition against the communication dated 8th June, 2007 and need not be repeated herein again.

10. For the reasons stated above therefore we find no case for interference. Both the Petitions therefore fail and are rejected.

11. At this stage the learned Advocate for the

petitioner referring to the interim order which was passed in the Petition states that the petitioner may be granted some time in order to take another opinion from the higher Court in the matter. The same is opposed on behalf of the Respondents. As already observed above, in the case in hand it is not in dispute that the order of deportation of the petitioner was issued as long back as on 8.10.2005. However, since certain prerequisites were not complied with, pursuant to the order passed by Apex Court the said order was not implemented and further procedure was followed and show cause notice was issued and after complying with the requisites of the principle of natural justice and the statutory provisions, the order directing the petitioner to leave the country came to be passed. Meanwhile as already seen above, the application for grant of Indian Citizenship did not yield fruitful result on account of the failure on the part of the petitioner to comply with prerequisite for grant of such citizenship. The facts narrated in the affidavit of the Assistant Commissioner of Police referred to

above and narrated and also those quoted above clearly justify the action taken by the concerned authorities. In the circumstances, we do not find any case having been made out for grant of stay to the order passed today. Hence, request for grant of stay and further time in that regard is rejected.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]